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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 11-0242
)
 Harvey Rodriguez, and)
 Michelle Hastings,¹)
)
 Respondents) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 19, 2011. The Administrator instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice].

The Administrator alleges that, on June 20, 2009: (1) Harvey Rodriguez, in violation of 15 U.S.C. § 1824(2)(B), entered for the purpose of showing or exhibiting a

¹This case was originally captioned "In re Harvey Rodriguez, and Michelle Hasting." I have amended the caption to reflect the correct spelling of Ms. Hastings' last name as indicated in Ms. Hastings' December 28, 2011, filing.

horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore; and (2) Michelle Hastings, in violation of 15 U.S.C. § 1824(2)(B) and (2)(D), entered and allowed the entry for the purpose of showing or exhibiting a horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore (Compl. at 2 ¶ II).

On June 29, 2011, the Hearing Clerk served Ms. Hastings with the Complaint, the Rules of Practice, and the Hearing Clerk's May 20, 2011, service letter.² On August 5, 2011, the Hearing Clerk served Mr. Rodriguez with the Complaint, the Rules of Practice, and the Hearing Clerk's May 20, 2011, service letter.³ Ms. Hastings and Mr. Rodriguez failed to file an answer to the Complaint within 20 days after the Hearing Clerk served them with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated July 21, 2011, to Ms. Hastings and a letter, dated August 25, 2011, to Mr. Rodriguez informing them that their answer to the Complaint had not been filed within the time prescribed in the Rules of Practice. Ms. Hastings did not respond to the Hearing Clerk's letter dated July 21, 2011. Mr. Rodriguez did not respond to the Hearing Clerk's letter dated August 25, 2011.

²Domestic Return Receipt for article number 7009 1680 0001 9851 7653.

³Memorandum to the File, dated August 5, 2011, and signed by L. Eugene Whitfield, Hearing Clerk.

On September 30, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] filed a Show Cause Order directing the parties to show cause why a default decision and order should not be entered. On October 17, 2011, the Administrator filed a timely response to the Chief ALJ's Show Cause Order contending there was no reason why a default decision and order should not be entered. Neither Ms. Hastings nor Mr. Rodriguez filed a response to the Chief ALJ's Show Cause Order. The Administrator attached to the response to the Chief ALJ's Show Cause Order a Motion for Adoption of Proposed Decision and Order and a proposed Decision and Order Upon Admission of Facts by Reason of Default. Neither Ms. Hastings nor Mr. Rodriguez filed timely objections to the Administrator's Motion for Adoption of Proposed Decision and Order or the Administrator's proposed Decision and Order Upon Admission of Facts by Reason of Default.

On November 18, 2011, in accordance with 7 C.F.R. § 1.139, the Chief ALJ filed a Default Decision and Order: (1) concluding that Mr. Rodriguez and Ms. Hastings violated the Horse Protection Act, as alleged in the Complaint; (2) assessing Mr. Rodriguez and Ms. Hastings each a \$2,200 civil penalty; and (3) disqualifying Mr. Rodriguez and Ms. Hastings for 1 year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction (Chief ALJ's Default Decision and Order at 2-3).

On December 28, 2011, Mr. Rodriguez and Ms. Hastings appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On January 17, 2012, the Administrator filed Complainant's Response to Appeal. On January 19, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision and order.

DECISION

Statement of the Case

Mr. Rodriguez and Ms. Hastings failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). The Rules of Practice (7 C.F.R. § 1.136(c)) provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing. Accordingly, the material allegations of the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Harvey Rodriguez is an individual with a mailing address in Shelbyville, Tennessee.

2. Michelle Hastings is an individual with a mailing address in Shelbyville, Tennessee.

3. At all times material to this proceeding, Harvey Rodriguez was the trainer and an owner of the horse known as "Broken Dreams" entered as entry number 165, in class number 9, on June 20, 2009, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee.

4. At all times material to this proceeding, Michelle Hastings was an owner of the horse known as "Broken Dreams" which was entered as entry number 165, in class number 9, on June 20, 2009, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee.

5. On June 20, 2009, Harvey Rodriguez entered for the purpose of showing or exhibiting the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore.

6. On June 20, 2009, Michelle Hastings entered and allowed the entry for the purpose of showing or exhibiting the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Harvey Rodriguez's entry of the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, on June 20, 2009, for the purpose of showing or exhibiting, while the horse was sore, violated 15 U.S.C. § 1824(2)(B).
3. Michelle Hastings' entering and allowing the entry of the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, on June 20, 2009, for the purpose of showing or exhibiting, while the horse was sore, violated 15 U.S.C. § 1824(2)(B) and (D).

Mr. Rodriguez and Ms. Hastings' Appeal Petition

Mr. Rodriguez and Ms. Hastings raise three issues in their letter to the Office of Administrative Law Judges dated December 14, 2011, and filed with the Hearing Clerk on December 28, 2011 [hereinafter Appeal Petition]. First, Mr. Rodriguez and Ms. Hastings assert they previously addressed the allegations in the Complaint in letters dated July 25, 2011, and November 14, 2011. Mr. Rodriguez and Ms. Hastings surmise that the appropriate person did not receive these letters. (Appeal Pet. at 1.)

The record transmitted by the Hearing Clerk to the Office of the Judicial Officer does not include any letter dated July 25, 2011, or November 14, 2011, from Mr. Rodriguez and Ms. Hastings. The first and only filing by Mr. Rodriguez and

Ms. Hastings in the record is their Appeal Petition dated December 14, 2011, and filed December 28, 2011. The Complaint, the Rules of Practice, and the Hearing Clerk's letter dated May 20, 2011, all of which the Hearing Clerk served on Ms. Hastings on June 29, 2011,⁴ and on Mr. Rodriguez on August 5, 2011,⁵ state the response to the Complaint must be filed with the Hearing Clerk. I have consistently held that delivery to a person other than the Hearing Clerk does not constitute filing with the Hearing Clerk.⁶ Therefore, if, as Mr. Rodriguez and Ms. Hastings surmise, the letters dated July 25, 2011, and November 14, 2011, were received by a person other than the Hearing Clerk, they

⁴See note 1.

⁵See note 2.

⁶See *In re Carolyn & Julie Arends*, ___ Agric. Dec. ___, slip op. at 16-17 (Nov. 15, 2011) (stating the Administrator's counsel's receipt of the respondents' response to an Order to Show Cause does not equate to the respondents' filing their response to the Order to Show Cause with the Hearing Clerk); *In re Heartland Kennels, Inc.*, 61 Agric. Dec. 492, 537 (2002) (stating an incarcerated pro se respondent's delivery of a document to prison authorities for forwarding to the Hearing Clerk does not constitute filing with the Hearing Clerk); *In re Jack Stepp* (Ruling Denying Respondents' Pet. for Recons. of Order Lifting Stay), 59 Agric. Dec. 265, 268 (2000) (stating neither respondents' mailing the Reply to Motion to Lift Stay nor the United States Postal Service's delivering the Reply to Motion to Lift Stay to the United States Department of Agriculture, Mail & Reproduction Management Division, constitutes filing with the Hearing Clerk); *In re Sweek's, Inc.*, 58 Agric. Dec. 212, 213 n.1 (1999) (stating appeal petitions must be filed with the Hearing Clerk; indicating that the hearing officer erred when he instructed litigants that appeal petitions must be filed with Judicial Officer); *In re Severin Peterson* (Order Denying Late Appeal), 57 Agric. Dec. 1304, 1310 n.3 (1998) (stating that neither the applicants' mailing their appeal petition to Regional Director, National Appeals Division, nor receipt of the applicants' appeal petition by the National Appeals Division, Eastern Regional Office, nor the National Appeals Division's delivering the applicants' appeal petition to the Office of the Judicial Officer, constitutes filing with the Hearing Clerk).

have not been filed with the Hearing Clerk, they are not part of the record, and they cannot be considered.

Second, Mr. Rodriguez and Ms. Hastings deny Ms. Hastings was the owner or exhibitor of “Broken Dreams” (Appeal Pet. at 1 ¶ 1).

The Hearing Clerk served Ms. Hastings with the Complaint on June 29, 2011.⁷ Ms. Hastings was required by the Rules of Practice to file a response to the Complaint within 20 days after the Hearing Clerk served her with the Complaint;⁸ namely, no later than July 19, 2011. The Rules of Practice provide that failure to file a timely answer shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint.⁹ Ms. Hastings’ denial of the allegations of the Complaint in the Appeal Petition, filed December 28, 2011, 5 months 29 days after the Hearing Clerk served Ms. Hastings with the Complaint, comes far too late to be considered. As Ms. Hastings has failed to file a timely answer, Ms. Hastings is deemed to have admitted the material allegations of the Complaint, and I reject her late-filed denial of the allegations of the Complaint.

⁷See note 1.

⁸See 7 C.F.R. § 1.136(a).

⁹See 7 C.F.R. § 1.136(c).

Third, Mr. Rodriguez and Ms. Hastings assert they have been previously sanctioned by a horse industry organization for their activities on June 20, 2009, at the Eagleville Lions Club Horse Show, Eagleville, Tennessee (Appeal Pet. at 1 ¶ 2).

Mr. Rodriguez and Ms. Hastings make no argument based on this assertion. However, this very same assertion has been raised in previous cases in connection with the argument that a sanction by a horse industry organization bars the Secretary of Agriculture from enforcing the Horse Protection Act. That argument has no merit, and I have rejected the argument each time it has been raised.¹⁰

For the foregoing reasons, the following Order is issued.

ORDER

1. Harvey Rodriguez and Michelle Hastings are each assessed a \$2,200 civil penalty. The civil penalties shall be paid by certified checks or money orders, made payable to the “Treasurer of the United States” and sent to:

Robert A. Ertman
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

¹⁰*In re Robert Raymond Black, II*, 66 Agric. Dec. 1217, 1224-26 (2007), *aff'd sub nom. Derickson v. U.S. Dep't of Agric.*, 547 F.3d 335 (6th Cir. 2008); *In re Jackie McConnell*, 64 Agric. Dec. 436, 467-69 (2005), *aff'd*, 198 F. App'x 417 (6th Cir. 2006) (unpublished).

Mr. Rodriguez's civil penalty payment shall be received by Mr. Ertman within 60 days after service of this Order on Mr. Rodriguez. Ms. Hastings' civil penalty payment shall be received by Mr. Ertman within 60 days after service of this Order on Ms. Hastings. Mr. Rodriguez and Ms. Hastings shall indicate on the certified checks or money orders that the payments are in reference to HPA Docket No. 11-0242.

2. Harvey Rodriguez and Michelle Hastings are disqualified for one uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (1) transporting, or arranging for the transportation of, horses to or from equine events; (2) personally giving instructions to exhibitors; (3) being present in the warm-up or inspection areas or in any area where spectators are not allowed; and (4) financing the participation of others in equine events.

The disqualification of Mr. Rodriguez shall become effective on the 60th day after service of this Order on Mr. Rodriguez. The disqualification of Ms. Hastings shall become effective on the 60th day after service of this Order on Ms. Hastings.

RIGHT TO JUDICIAL REVIEW

Harvey Rodriguez and Michelle Hastings have the right to obtain review of this Order in the court of appeals of the United States for the circuit in which they reside or have their place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Rodriguez and Ms. Hastings must file a notice of appeal in such court within 30 days from the date of this Order and must simultaneously send a copy of any notice of appeal by certified mail to the Secretary of Agriculture.¹¹ The date of this Order is January 24, 2012.

Done at Washington, DC

January 24, 2012

[REDACTED]
William G. Jenson
Judicial Officer

¹¹15 U.S.C. § 1825(b)(2), (c).